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WERNER ENTERPRISES, INC. and
NICOLAS FORCILLO

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DARLENE ISAAC; and HAROLD ROLAND
HOWMAN, JR.,

Plaintiffs,

vs.

NICOLAS FORCILLO, an individual,
WERNER ENTERPRISES, INC., a foreign
corporation, DOES I through X, inclusive;
and/or ROE CORPORATIONS I through X,
inclusive

Defendants.

CASE NO. 2:19-CV-01452-KJD-BNW

**STIPULATION AND ORDER TO
DEPOSE NON-RETAINED EXPERT,
ELLIOTT SKORUPA, MSEP AFTER
THE CLOSE OF DISCOVERY**

(First Request)

The parties respectfully request the Court's permission to complete the deposition of treating provider and non-retained expert, Elliott Skorupa, MSEP after the close of discovery.

I. BACKGROUND

Mr. Elliott Skorupa, MSEP performed a Functional Capacity Evaluation of Plaintiff Darlene ("Plaintiff") on January 15, 2019 in her worker's compensation case. His deposition was set and taken by Plaintiff former counsel, Justin W. Wilson, Esq. on May 3, 2021. Due defense counsel's personal medical appointment and Mr. Skorupa being on the East Coast, Mr. Skorupa and counsel all agreed to a second day in order to complete the deposition. Since that time, Plaintiffs and Defendants have worked amicably to schedule a mutually agreeable date and time

1 to complete Mr. Skorupa's deposition. Defendants set the continuing deposition on October 18,
2 2021 and served Mr. Skorupa with a deposition subpoena.

3 On October 8, 2021, Defendants received an email from Plaintiffs' counsel's office
4 informing defense counsel that Mr. Skorupa would not be available on October 18, 2021 to
5 complete his deposition due to a surgical procedure he would be undergoing on October 14, 2021
6 with an unknown recovery time (*See Ex. A*). The information was provided by Deputy General
7 Counsel, Cynthia Marietta, for Physical Therapy Solutions where Mr. Skorupa is employed.

8 Defense counsel reached out to Ms. Marietta to discuss, followed up by an email
9 communication on October 15, 2021, in which it was expressed that the parties are willing to
10 work with Mr. Skorupa in light of his upcoming surgical procedure and accommodate his
11 recovery (*See Ex. B*). The parties currently have a discovery closure deadline of November 6,
12 2021. Ms. Marietta subsequently advised defense counsel that Mr. Skorupa was underwent the
13 surgical procedure to his jaw and did not know precisely when he will be able to speak and
14 testify.

15 The parties discussed this issue and agreed to move forward and make a record of the
16 issue on October 18, 2021, to make record of Mr. Skorupa's surgery and agreement to stipulate
17 to allow the completion of Mr. Skorupa's deposition after the close of discovery (*See Ex. C*).

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II. CONCLUSION

The parties submit this Stipulation to complete the deposition of non-retained expert Elliott Skorupa, MSEP after the close of discovery in good faith and not in to delay this litigated proceeding; and, ask this Honorable Court to grant this Stipulation.

Dated this 27th day of October 2021.

Dated this 27th day of October 2021.

H&P LAW

THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER

/s/ Marjorie L. Hauf

/s/ Michael C. Hetey

MARJORIE L. HAUF, ESQ.

Nevada Bar No. 8111

MATTHEW G. PFAU, ESQ.

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Attorneys for Plaintiffs,
DARLENE ISAAC and
HAROLD ROLAND HOWMAN, JR.

Attorneys for Defendants,
WERNER ENTERPRISES, INC. and
NICOLAS FORCILLO

Order

IT IS SO ORDERED

DATED: 3:29 pm, October 28, 2021



**BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE**

EXHIBIT A

Lara M. Feldstein

From: Victoria Agunos <vagunos@CourtRoomProven.com>
Sent: Friday, October 8, 2021 2:53 PM
To: Lara M. Feldstein; Jennifer Hodge; Michael C. Hetey; Austin J. De Reis
Cc: Matthew G. Pfau
Subject: FW: Isaac v. Werner Dr. Skorupa

Follow Up Flag: Follow up
Flag Status: Completed

Hello all,

Mr. Skorupa will not be available for the deposition on October 18, 2021 due to a surgery he will be undergoing on October 14, 2021. Please see below e-mail.



Victoria Agunos
Paralegal
8950 W Tropicana Ave, #1
Las Vegas, Nevada 89147
702 598 4529 TEL
702 598 3626 FAX
www.courtroomproven.com

From: Victoria Agunos [<mailto:vagunos@CourtRoomProven.com>]
Sent: Friday, October 8, 2021 2:35 PM
To: ALAN PIETRUSZKIEWICZ
Cc: JENNIFER WILLIAMS; Matthew G. Pfau; Cynthia Marietta
Subject: RE: Isaac v. Werner Dr. Skorupa

Victoria,

This confirms that Mr. Skorupa will not be available for deposition on Oct. 18, 2021. He is scheduled to undergo surgery on Oct. 14, 2021. At this point, it is unknown when he will be available to continue his deposition given the complexity of his diagnosis and surgical procedure.

Kind Regards,
Cyndi
Cynthia Marietta
Deputy General Counsel
Physical Therapy Solutions, LP
U.S. Physical Therapy, Inc.
1300 West Sam Houston Parkway S, Suite 300 Houston, Texas 77042
713.297.7013 (direct line)
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EXHIBIT B

Lara M. Feldstein

From: Lara M. Feldstein
Sent: Friday, October 15, 2021 9:22 AM
To: 'cmarietta@usph.com'
Cc: Michael C. Hetey; Jennifer Hodge; Austin J. De Reis
Subject: Werner-Isaac / Deposition of Elliott Skorupa

Good morning Ms. Marietta,

This is in follow up to my voicemail message last week with regards to the deposition of Elliott Skorupa in the matter of *Isaac, et al. v. Werner Enterprises, Inc., et al.* We of course are willing to work with Mr. Skorupa to reschedule the completion of his deposition given his recent surgery; however, we do need to be provided with alternative availability. As I mentioned, we have a discovery closure date of November 2, 2021. If you are able to provide us with alternative dates we can inform the Court of Mr. Skorupa's situation in completing his deposition and ask for leave to depose him after discovery closes to accommodate his recovery. If you believe we should place something on the record, we can do that as well.

Would you have time today to discuss this matter with Mr. Hetey?

Lara M. Feldstein | Paralegal |
Thorndal Armstrong Delk Balkenbush & Eisinger
[1100 East Bridger Avenue](#) | [P.O. Box 2070](#) | [Las Vegas, Nevada 89125-2070](#) |
Phone: [\(702\) 366-0622](#) x 2165 | Facsimile: [\(702\) 366-0327](#) | lmf@thorndal.com

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EXHIBIT C

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF VIRGINIA
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4 DARLENE ISAAC and HAROLD)
5 HOWMAN, JR.,)
6)
7 Plaintiffs,) CASE NO.: 2:19-01452-
8) KJD-BNW
9 vs.)
10)
11 WERNER ENTERPRISES, INC. and)
12 NICOLAS FORCILLO,)
13)
14)
15 Defendants.)
16 _____)
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CERTIFICATE OF NONAPPEARANCE


DEPOSITION BY ZOOM OF ELLIOT SKORUPA, MSEP

LAS VEGAS, NEVADA

MONDAY, OCTOBER 18, 2021

REPORTED BY: GINA DILUZIO, RPR, CCR #833
JOB NO. 807631

NONAPPEARANCE OF ELLIOTT SKORUPA, MSEP - 10/18/2021

<p style="text-align: right;">Page 2</p> <p>1 CERTIFICATE OF NONAPPEARANCE, DEPOSITION BY ZOOM OF</p> <p>2 ELLIOTT SKORUPA, MSEP, taken at Las Vegas, Nevada, on</p> <p>3 Monday, October 18, 2021, at 11:59 a.m., remotely before</p> <p>4 Gina DiLuzio, Certified Court Reporter, in and for the State</p> <p>5 of Nevada.</p> <p>6</p> <p>7 APPEARANCES:</p> <p>8 For the Plaintiffs:</p> <p>9 H&P LAW, PLLC</p> <p>10 BY: MARJORIE L. HAUF, ESQ.</p> <p>11 8950 W. Tropicana Avenue</p> <p>12 Suite 1</p> <p>13 Las Vegas, Nevada 89147</p> <p>14 (702) 598-4529</p> <p>15 mhauf@courtroomproven.com</p> <p>16 For the Defendants:</p> <p>17 THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER</p> <p>18 BY: MICHAEL C. HETLEY, ESQ.</p> <p>19 1100 East Bridger Avenue</p> <p>20 Las Vegas, Nevada 89125</p> <p>21 (702) 366-0622</p> <p>22 mch@thorndal.com</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1 LAS VEGAS, NEVADA, MONDAY, OCTOBER 18, 2021</p> <p>2 11:59 A.M.</p> <p>3 -oOo-</p> <p>4 Thereupon--</p> <p>5 MR. HETLEY: This is Mike Hetey for the</p> <p>6 Defendants.</p> <p>7 This is the date and time set for the</p> <p>8 deposition of Elliott Skorupa, that being day two of his</p> <p>9 continuing deposition.</p> <p>10 And he has been served with the deposition</p> <p>11 subpoena and notice, but we were contacted by a -- an</p> <p>12 attorney for the physical therapy company for which he works</p> <p>13 who stated that he had some form of recent surgery. We</p> <p>14 believe it may have even involved his jaw and he could not</p> <p>15 appear for today.</p> <p>16 So we are going to move to continue the</p> <p>17 deposition to a date when he can appear and is medically</p> <p>18 safe and sound to provide testimony for day two of his</p> <p>19 deposition, which may have to go forward after the close of</p> <p>20 discovery if he is not able to do or have the deposition</p> <p>21 completed before then due to these medical issues.</p> <p>22 Marjorie, do you have anything to add?</p> <p>23 MS. HAUF: The only thing that I would add is I</p> <p>24 do not see any proof of service that he was actually served</p> <p>25 with a copy of the subpoena. But I don't know. He has been</p>
<p style="text-align: right;">Page 4</p> <p>1 in contact with his office.</p> <p>2 MR. HETLEY: I asked my office -- we were told</p> <p>3 that we -- I was told by my assistant we served him. So</p> <p>4 we're happy to provide whatever -- whatever we've got.</p> <p>5 MS. HAUF: Sounds good.</p> <p>6 MR. HETLEY: And, Marjorie, you and I emailed.</p> <p>7 If we need to put a stipulation together, you guys are okay</p> <p>8 with putting a stipulation together to submit to the Court</p> <p>9 for purposes of just completing this deposition</p> <p>10 post-discovery?</p> <p>11 MS. HAUF: Yeah, obviously, based upon his</p> <p>12 availability due to his surgery, of course.</p> <p>13 MR. HETLEY: I appreciate that. And so I don't</p> <p>14 think there's anything more to add. We can complete the</p> <p>15 deposition unless Marjorie has anything to add.</p> <p>16 MS. HAUF: Nope.</p> <p>17 MR. HETLEY: I say not complete. There'll be a</p> <p>18 day two, at some point, but we'll stop for today.</p> <p>19 MS. HAUF: All right. Thank you, folks.</p> <p>20 MR. HETLEY: All right. Thank you.</p> <p>21 (Whereupon, the proceedings were concluded at</p> <p>22 12:01 p.m.)</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 REPORTER'S CERTIFICATE</p> <p>2 STATE OF NEVADA)</p> <p>3) ss:</p> <p>4 COUNTY OF CLARK)</p> <p>5 I, Gina DiLuzio, a Certified Court Reporter, do</p> <p>6 hereby certify:</p> <p>7 That I reported remotely in shorthand (Stenotype)</p> <p>8 the proceedings had in the above-entitled matter at the</p> <p>9 place and date indicated.</p> <p>10 That I thereafter transcribed my said shorthand</p> <p>11 notes into typewriting, and that the typewritten transcript</p> <p>12 is a complete, true and accurate transcription of my said</p> <p>13 shorthand notes.</p> <p>14 IN WITNESS WHEREOF, I have set my hand in my</p> <p>15 office in the County of Clark, State of Nevada, this 20th</p> <p>16 day of October, 2021.</p> <p>17</p> <p>18 </p> <p>19 GINA DILUZIO, RPR, CCR #833</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

NONAPPEARANCE OF ELLIOTT SKORUPA, MSEP - 10/18/2021

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